The Malayan Law Journal

1971

BEING

REPORTS OF MALAYSIAN AND SINGAPORE CASES DETERMINED IN THE HIGH COURTS, THE FEDERAL COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL

SINGAPORE REPORTS

TEO CHEW SENG v. SINGAPORE ANTI-TUBERCULOSIS ASSOCIATION

[O.C.J. (Chua J.) February 18, 1970]

[Singapore — Suit No. 469 of 1966]

Master and Servant — Dismissal for misconduct — Action for wrongful dismissal — Damages — Plea of justification — Whether dismissal justified.

In May, 1959, the plaintiff Dr. Teo Chew Seng, was engaged by the defendants, SATA, as a chest physician. On February 26, 1966, the plaintiff gave one month's written notice to terminate his employment, which was accepted by the defendants. However, prior to the expiry of the said notice the plaintiff, published and circulated a document dated March 2, 1966, addressed "To my friends and colleagues in SATA clinic", in which the plaintiff said he "would like to clear up some misunderstanding and rumours occasioned by my resignation, and to heal any hurt feelings there may be as a result of the rumours". The general effect of this circular reflected poorly upon the defendants.

Exception was taken to this circular by the defendants' medical director, and by SATA Council which informed the plaintiff on March 10, 1966, that unless the council received an unconditional written apology within 24 hours, he would be dismissed. The plaintiff was dismissed on March 16, 1966, after expressly refusing to apologise.

The ground of dismissal alleged in the pleadings was misconduct, in that the plaintiff issued and circulated a document amongst the defendants' employees which was untruthful in content and undermined the authority of the medica director, who was the senior executive officer, and was prejudicial to the interests and reputation of the defendants.

The plaintiff sued the defendants for damages for wrongful dismissal. The sole question was whether the defendants had established misconduct.

Held, dismissing the claim: (1) the circular was clearly derogatory of the medical director, as, in the hands of all the members of the SATA staff, it could only have resulted in lowering the medical director in the esteem of the staff and have a prejudicial effect on his authority;

(2) the circular was incompatible with the continuance of the plaintiff's employment as a physician with the defendants. Neither the defendants nor any other employer could reasonably have been expected to continue to employ an employee who represented to the rest of the staff that the senior executive officer of the employer was a schemer, a fixer and was dishonourable. Therefore, the plaintiff was rightly dismissed.

Case referred to:-

(1) *Clouston & Co. Ltd.* v. *Corry* [1906] A.C. 122.

CIVIL SUIT.

M. Karthigesu for the plaintiff.

J. Grimberg for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiff in this action, Dr. Teo Chew Seng, was engaged by SATA, the defendants, in May, 1959, as a chest physician. By a letter dated the 28th February, 1966, addressed to the defendants' medical director, Dr. Sen-Gupta, the plaintiff gave the defendants one month's notice of the termination of his employment, the said notice expiring on the 30th March. 1966, and which said notice was accepted by the defendants. Prior to the expiry of the said notice the plaintiff published and circulated a document dated the 2nd March addressed "To My Friends and Colleagues in SATA Clinic" in which the plaintiff said he "would like to clear up some misunderstanding and rumours occasioned by my resignation, and to heal any hurt feelings there may be as a result of the rumours." Exception was taken to this circular by the medical director and by SATA Council. By letter dated the 10th March SATA Council informed the plaintiff that unless council received an unconditional written apology from him within 24 hours he would be dismissed. By letter dated the 12th March the plaintiff, through his solicitors, informed SATA Council that he did not intend to make any apology. The plaintiff was dismissed on the 16th March. The plaintiff now sues the defendants for damages for wrongful dismissal. The ground of dismissal which was alleged against the plaintiff in the pleadings was misconduct.

The relationship between the plaintiff and the medical director was cordial until December, 1965. That was the month when the medical director met the plaintiff's father-in-law and told the latter that although the plaintiff's work was generally satisfactory there had been complaints concerning the plaintiff's lack of interest in his patients. A few days later, on the 3rd December, the plaintiff confronted the medical director to clarify the remarks that the latter had made to his father-in-law and to inquire if the medical director was satisfied with his work.

Following this confrontation, according to the plaintiff, the medical director's attitude towards him completely changed. The plaintiff said: "Outwardly he was his normal amiable self, affable, smiling and pleasant. But the moment I was alone with him, his

attitude completely changed, he became aggressive, sarcastic and fault-finding."

The plaintiff in his evidence dwelt on a number of incidents which arose in the clinic after his confrontation with the medical director. He complained to the medical director about the almoner referring his cases direct to the deputy medical director and prescribing dangerous drugs and signing for them on the patients' treatment cards. He described the squabble he had with the personnel officer over the parking of the latter's motor car and the manner in which the medical director dealt with the matter. He told the court that when he applied for one week's leave the medical director's reply was a blunt "No" unless he could find a *locum*.

The incident with which we are really concerned and which led up to the resignation of the plaintiff and the issue of the circular by the plaintiff is this. From the time he joined SATA right up to August, 1965, the plaintiff had one permanent nurse attached to him. That nurse left him and due to a shortage of nurses it was not possible to assign another permanent nurse to the plaintiff. The plaintiff then came to an arrangement with the supervisor, whose main function was the supervision and deployment of nurses, whereby the plaintiff selected three nurses from the pool and each nurse would serve him for a minimum period of one month and a maximum of two and these nurses would do that in rotation. This arrangement started in September, 1965. On the 24th February, 1966, the supervisor informed the plaintiff that none of these three nurses would be available to him from March and that a nurse X would be assigned to him. The plaintiff said that he refused to accede to this arrangement and that his reason for refusing to have nurse X was one of principle. He said: "The principle was, I had already selected my three nurses and only anyone of these three should be allotted to me. If the supervisor had said one of these three nurses was to be assigned to me I would not have objected." Another reason he gave was that nurse X was not experienced to be a physician's nurse. The supervisor reported to the medical director who sent for the plaintiff.

There is a conflict of evidence as to what took place in the medical director's room. The evidence of the plaintiff was this:

"The director asked me 'What is this I heard you don't want this so-and-so to be your nurse?' He then told me that he had already decided to allot this nurse X not only for the month of March but permanently from March onwards and he said: 'I will see to it that you have her from now onwards, no more rotation but if you still object then you put down your objections in writing, list your objections specifically so that I can present your report to the union and dispense with her services.' He then said that he was very dissatisfied with this nurse and he was scared to sack her because if he did so the union would sit on his head. I then replied: 'You are afraid of the union sitting on your head yet I should not be afraid of the union sitting on my head', and I added: 'Do you know what is going to happen to me if the nurse gets the sack on the strength of my report, the union is going to make life so miserable for me through its members in SATA that eventually I have to resign; in that case it is better for me to resign gracefully now.' He then said: 'You have no choice in this matter; either you give that report or else you have the nurse as your permanent nurse from now onwards.' Just then the telephone rang and he was engaged over the telephone for 2 minutes. After putting down the receiver he asked: 'Well, what have you decided?' I said I still had a choice, I would hand in my resignation at the end of the month. I then rose and left the room but as a parting shot he said: 'Think it over.' "

The evidence of the medical director was this:

"I asked the plaintiff as to why he had taken strong objection to the assignment of nurse X as his personal nurse. He replied that the nurse in question was inefficient. I pointed out to him that nurse X had already been in the service of SATA for about 7 years during which period she had worked both in the injection room and also as a relief nurse to physicians and during this period there had been no adverse reports on her ability as a nurse. I further pointed out to him that the duties of a physician's nurse were extremely simple and that even a nurse without experience or prior knowledge of the type of functions she was supposed to undertake as a physician's nurse could be carried out even by a most inexperienced person. I then explained to him the supervisor's reason for assigning nurse X to him was because of the fact that this nurse who had up to then been working in the injection room and giving streptomycine injection to the patients had developed allergy or hypersensitivity to this drug and could not therefore continue working in the injection room. For this reason she was being assigned to him as his personal nurse.

. . . .

The plaintiff did not accept the explanation that I had given him but instead continued to demand that nurse X should not be assigned to him.

I also told him that unless he was able to give good reasons I would not be prepared to overrule the decision of the supervisor which I thought was a correct one.

There is no truth at all that the union was mentioned at this conversation and that I had required of him a written statement in order that I could show cause to the union to bring about the dismissal of nurse X.

I told plaintiff he must be able to give good reasons before I would overrule the decision of the supervisor. The matter ended with the plaintiff stating that he would rather resign then accept the assignment of nurse X to him.

I did not mention at all about the possible dismissal of nurse X."

On the 28th February the plaintiff sent in his letter of resignation and on the same afternoon the plaintiff received the medical director's letter accepting his resignation.

The plaintiff said that on the afternoon of the 28th February rumours began to circulate. He said:

"The rumours were, first, I was very petty; secondly that I had a violent quarrel with the director and was asked by him to resign; thirdly that I only wanted pretty nurses to attend me. These were the main rumours that I had heard that afternoon and the following day. I was very embarrassed to hear those rumours because they were absolutely without foundation. The three nurses were very upset and hurt; they came to see me and told me because of my resignation their names had been linked with mine. In order to allay all those fears and rumours I decided to do something to scorch those rumours before they got out of hand. I could not think of any way by which I could save myself and the nurses from such malicious gossips. These rumours were incidentally damaging to my personal reputation as a professional man, I took a very serious view of those rumours."

The plaintiff said that he there and then decided to write a circular to present a correct picture and the reasons for his resignation. He handed the circular letter to a member of the SATA staff to be cyclostyled

and members of the SATA staff helped him to circulate the letter to the SATA staff and he sent to each and every SATA Councillor the circular letter.

The circular letter reads as follows:

"To My friends and Colleagues in SATA Clinic

Dear Friends,

It is with a very heavy heart that I end this long and happy association with you all. Before I go, I would like to clear up some misunderstanding and rumours occasioned by my resignation, and to heal any hurt feelings there may be as a result of the rumours.

The circumstances which gave rise to my final decision may be known to some of you but for the sake of those who do not know, I will explain. Up to a little more than half a year ago I had been attended by one fixed assistant nurse. For the convenience of the clinic I later agreed to a rotation of three nurses, each staying for a period of two months. On the 24th February I was informed by the supervisor of the treatment unit that none of the usual three could be spared and that nurse X would attend my sessions instead. I was very annoyed but not because of any personal animosity towards nurse X. She had never been assigned to any physician before for any length of time except as a relief. And as a busy physician who had to work quickly, I naturally preferred to work with the more experienced nurses who knew the routine well. Also, as a matter of principle, it had been agreed that instead of having one fixed nurse (as the other physicians here had) I was to have any one of three, and it was only fair that they should abide by this arrangement.

My very natural annoyance was reported to the medical director who sent for me and put it this way: It was decided to assign nurse X to me permanently whether I liked it or not, as he didn't know where else he could assign her. She could not be assigned to injections because of strepto allergy. However, he said, if my objections were so strong, I was to make a written report stating that I did not wish for her services on grounds of her inefficiency and unsuitability, listing them specifically so that he may show cause to the union for dispensing with her services. This was, in all conscience, an impossible alternative. To be fair to nurse X, apart from her competency as a physician's nurse or otherwise, she had, to my knowledge, been working competently and conscientiously in other departments of the clinic for the past 6 years. I myself have never worked long enough at any time with nurse X to be able to report truthfully any shortcomings on her part, and it would have been neither fair nor honest to do so. Why, I asked, should I be singled out for this wholly unpleasant responsibility for her dismissal? On the other hand, as a matter of principle, I felt it was not respectful to myself as a physician (fairly senior in years of service here) to be forced into an arrangement when another had previously been agreed upon.

Finally, I was virtually given this ultimatum: Either I accept nurse X as my permanent physician's nurse from now onwards, or else prepare an unfavourable statement about her. There was to be no other choice. Obviously it was a calculated attempt to 'fix' me. And this became more obvious when immediately after I handed in my resignation, it was made possible for one of the three 'who couldn't be spared' nurses to be assigned to me.

As a gentleman, and a member of an honourable profession — the choice was clear. I had but two minutes to make up my mind. I did what I considered, and still consider, to be the only right thing to do under the circumstances ... I resigned.

I have enjoyed working here, my colleagues are congenial and most of the staff are my friends. I am sure they will agree that the moment has come when one has to decide either to serve with honour, or not to serve at all."

On the 10th March the following letter signed by the chairman, SATA Council, was sent to the plaintiff:

"Your circular addressed to your 'Friends and Colleagues in SATA Clinic', dated the 2nd March, 1966, has been considered by council.

Council is of the view that your action in issuing and distributing this circular, which undermines the authority of the administration, constituted an act inconsistent with the due performance of your duties to the association, was detrimental to discipline and amounted to misconduct on your part.

Unless Council receives an unconditional written apology from you within 24 hours of the receipt by you of this letter, you will be dismissed from the service of the association."

On the 12th March the following letter was sent to chairman, SATA council, by the plaintiff's solicitors:

"Your letter of the 10th instant, addressed to Dr. Teo Chew Seng has been handed to us with instructions to reply.

We are instructed to say that in issuing and distributing the circular in question our client did not intend to undermine the authority of the administration. Furthermore, his act cannot be conceded as being inconsistent with the due performance of his duties to the association so as to amount to misconduct on his part as alleged.

It is to be noted that the circular in question was circularised by our client on the 2nd instant, and that his resignation tendered to the medical director on the 28th February was accepted by the medical director on that very day. In the circumstances, our client considers that he is fully justified in doing what he did.

Our client does not intend making any apology to the council and if action is taken to dismiss him from the service of the association he will be compelled to commence proceedings against the association for damages for wrongful dismissal."

On the 16th March the plaintiff was dismissed.

The sole question in this case is whether or not the defendants have established misconduct.

The law to be applied is stated in the judgment of the Privy Council delivered by Lord James of Hereford in *Clouston & Co. Ltd.* v. *Corry*[1] (at p. 129):

"Now the sufficiency of the justification depended upon the extent of misconduct. There is no fixed rule of law defining the degree of misconduct which will justify dismissal. Of course there may be misconduct in a servant which will not justify the determination of the contract of service by one of the parties to it against the will of the other. On the other hand, misconduct inconsistent with the fulfilment of the express or implied conditions of service will justify dismissal."

The misconduct alleged in this case is that the plaintiff issued and circulated a document amongst the defendants' employees which was untruthful in content and undermined the authority of the medical director, who was the senior executive officer of the defendants, and was prejudicial to the interests and reputation of the defendants.

In his evidence the plaintiff related a number of incidents which took place in the clinic after his confrontation with the medical director in December, 1965, and prior to the incident which led to his dismissal. He did that I think to show that the medical director bore some sort of grudge against him. The plaintiff admitted that his complaints were attended to by the medical director but alleged that it was done with bad grace. The plaintiff said:

"It was not so much what the director said that annoyed me most, it was the manner in which he said it. He spoke with an air of disdain, a contemptuous snear on his face, he

literally spat out his words rather than speaking them. This manner of his was never shown to me prior to 3rd December."

It cannot be said that the medical director was behind the incidents relating to the almoner. As regards the incident with the personnel officer over the parking of the car it is highly improbable that the medical director would behave towards a senior officer like the plaintiff in the way alleged by the plaintiff. I think there is no truth also in the plaintiff's allegation that the medical director refused to allow him to take a week's leave unless he produced a *locum*.

I think the truth of the matter is that the plaintiff's pride was hurt by what the medical director told his father-in-law and thereafter the plaintiff became very difficult and took every opportunity to make complaints to the medical director and to find fault with the medical director.

The most relevant incident as far as this case is concerned is the incident of the 24th February. As I have said there is a conflict of evidence as to what happened between the plaintiff and the medical director But this is clear. The plaintiff strongly resisted having nurse X as his personal nurse on the ground that she was inefficient. He refused to accept a perfectly valid explanation. The plaintiff was being difficult and unreasonable. Any other member of the staff who was placed in the same situation as the plaintiff would have accepted the fact that since it was the decision of the administration he should accept it. But not the plaintiff.

It is highly improbable that the medical director would ask the plaintiff to list his objections to nurse X specifically in writing so that the medical director could present the plaintiff's objections to the union and dismiss the nurse. There was no reason why the medical director should want to dismiss nurse X who had been in the service for 7 years and against whom there had been no complaints before. There was equally no reason why the medical director should want to make the plaintiff the scapegoat. The truth I think is that the medical director was not prepared to accept a bare allegation of the plaintiff that nurse X was inefficient and told the plaintiff that unless the plaintiff could give good reasons he was not prepared to overrule the decision of the supervisor.

The circular is clearly derogatory of the medical director who was, and is, the senior executive officer of the defendants to whom the whole of the SATA staff was responsible and who was charged with the day to day administration of the entire association and the running of its clinic. The circular was in fact saying that the medical director was engineering a scheme to get rid of nurse X and that there was a calculated attempt on the part of the medical director to get the plaintiff into trouble with the union. This circular was written to show to the staff of SATA what an honourable man the plaintiff was and putting all the blame on the medical director. Whereas the truth is that it was the plaintiff who strenuously refused to have the nurse because according to him she was inefficient and a laggard and it was impossible for her to get used to his work in a short time.

The circular in the hands of all the members of the SATA staff could only have resulted in lowering the medical director in the esteem of the staff and have a prejudicial effect on his authority.

The plaintiff knew at that time that the union was pressing for better working conditions and he must have known that the relationship between SATA and the union had become very strained as a result of a breakdown in the negotiations. Yet, he saw fit to distribute to all members of the SATA staff irrespective of their positions in the organisation a circular alleging that the medical director was scheming to dismiss a union member. This act shows a total disregard by the plaintiff as to its consequences to the defendants.

The plaintiff said that rumours were flying around but it was because of his insistence to keep the three nurses that these rumours arose and caused embarrassment to the three nurses.

From the evidence it appears that the plaintiff did not seriously intend to resign. He said that he was hoping that there would be a change of heart on the part of the medical director and that the medical director would send for him and talk things over before accepting his resignation. He further said that if the medical director had done that very likely he would have considered withdrawing his resignation and had his resignation not been accepted he would not have distributed the circular.

I think the letter of resignation was just a means of bringing pressure to bear on the medical director to give the plaintiff what he wanted and when he was not asked to withdraw his resignation he was humiliated and thought that he would hit back at the medical director by issuing and distributing the circular.

If the plaintiff felt aggrieved by what took place on the 24th February he could have made representation to the council that he was being unfairly treated instead of issuing a circular and distributing it to all the staff of SATA.

The circular which the plaintiff disseminated while still in the employment of the defendants was incompatible with the continuance of his employment as a physician with the defendants. Neither the defendants nor any other employer could reasonably have been expected to continue to employ an employee who represented to the rest of the staff that the senior executive officer of the employer was a schemer, a fixer and was dishonourable. The plaintiff was rightly dismissed.

The plaintiff's claim is therefore dismissed with costs.

Claim dismissed.

Solicitors: *Allen & Gledhill; Drew & Napier.*